

INTELLIGENCE IDENTITIES PROTECTION ACT

From the passage of the National Security Act of 1947 and the establishment of the Central Intelligence Agency in 1949 up to the present day, the Congress has recognized the vital need to maintain the confidentiality and secrecy of intelligence activities and personnel. The Legislative Branch has realized that effective intelligence work cannot be conducted by the Executive under a spotlight or in the glare of constant disclosure and/or exposure of its employees, its operations, or its sources.

Thus it is that the DCI is directed in Section 102(d)(3) of the National Security Act to protect intelligence sources and methods from unauthorized disclosure. And so it is that Section 6 of the CIA Act of 1949 provided that:

In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5 [now repealed], and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: Provided, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5 [now repealed].
(Emphasis added)

Similarly, Section 10(b) of the 1949 Act (now Section 8(b)) provided that the DCI could account solely on his own certification for expenditures "for objects of a confidential, extraordinary, or emergency nature", and such expenditures were not subject to normal post-audit or accounting review by the GAO.

Subsequent to 1949, Congress has granted CIA further and particular exemptions from the reporting requirements levied on other executive agencies with respect to various functions. ✓

- Unlike other agencies, CIA is required to file an annual report concerning its employee pension plans only if the President in writing specifically requires such filing. (He has not). ✓

- In transmitting information to the Department of State regarding employee receipt of foreign gifts, the DCI is expressly authorized by statute to delete information which would identify the recipient.

- The Executive Personnel Financial Disclosure Reports (SF 278's) filed by Agency employees (other than those of the DCI, DDCI, and Designated Agency Ethics Officer) are by statute not subject to public disclosure.

- The identities of Agency employees and the mechanisms of cover are protected by statutory exemptions against public disclosure pursuant to the Freedom of Information Act (FOIA) and/or Privacy Act (PA). The recent exemption of operational and security files from FOIA searches represents another Congressional recognition of the special sensitivity of Agency information and activities.

Congress (and the President) also recently enacted the Intelligence Identities Protection Act (IIPA) of 1982, now codified as Sections 601-606 of the National Security Act, 50 U.S.C. §§421-426. This law basically makes it a crime for persons who now have or previously had access to classified information to intentionally disclose to any unauthorized recipient information identifying a covert intelligence agency employee who is serving outside the U.S. or has so served within the last five years, or identifying a "covert" U.S. citizen intelligence source or informant, or a present or former non-U.S. citizen agent, source, or operative. The law also makes it a crime for any person, even absent access to classified information, to disclose to any unauthorized recipient any information identifying any individual as falling within one of the three categories noted, in the course of a pattern of activities intended to identify and expose such covert agents and with reason to believe that such activities would impair the foreign intelligence activities of the United States. ✓

As noted in the Conference Report on the IIPA, the Act was intended to put a halt to efforts to identify covert agents (by which we essentially mean certain employees under cover and clandestine assets) and to expose them publicly. It was recognized that such disclosures "jeopardize the lives and safety of individuals and damage the ability of the United States to safeguard the national defense and conduct an effective foreign policy." The Report goes on to state that:

The disclosure of covert agents' identities is detrimental to the successful and efficient conduct of foreign intelligence and counterintelligence activities of the United States. Whatever the motives of those engaged in such activity, the only result is the disruption of our legitimate intelligence collection programs--programs that bear the imprimatur of the Congress, the President, and the American people. Such a result benefits no one but adversaries of the United States.

More eloquent statements concerning the need for the Act and the evil(s) it was intended to eliminate were made during both of the Congressional chambers' consideration of the Conference Report and final bill. Several of these are set forth below:

Senator Denton:

The disclosure of the identity of a covert agent is an immoral act, nationally and personally harmful which cannot be tolerated.

The reprehensible activities that this bill makes criminal have repeatedly exposed honorable public servants to personal peril and vastly reduced their effectiveness in pursuing their endeavors. This has produced a significant detriment to the national security. The insensitivity, irresponsibility, and amorality shown by those who seek to undermine the effectiveness of our intelligence capability are so inimical to our American democratic system that it seems certain that what we are about to do today should not be necessary. This bill is indeed overdue for passage.

Although in a free society we must welcome public debate about the role of the intelligence community as well as about other components of our Government, the irresponsible and indiscriminate disclosure of names and cover identities of covert agents serves no useful purpose whatsoever. As elected public officials, we have the duty, consistent with our oaths of office, to uphold the Constitution and to support the men and women of the U.S. intelligence services who perform important duties on behalf of their country, often at great personal risk and sacrifice.

Senator Goldwater:

This act will help protect our employees working abroad in the intelligence operations of this country. It will reduce the chances of their being identified and exposed and will reduce the risks of their being harassed, shot at, or even killed. The pernicious activity of "naming names" has the sole purpose of disrupting and destroying our intelligence activities. These unauthorized disclosures have been

extensive and yet, until today, we have not had a law to stop it. I think it is high time we have such a law. I hope the Senate passes this conference report today by an overwhelming vote.

It is bad enough that our citizens serving overseas and their families are exposed to violence. But to allow someone here at home to do it by putting an ID tag on them so that they become targets does not make any sense at all.

This act sets out a clear signal that U.S. intelligence officers will no longer be fair game for those members of their own society who wish to take issue with the existence of the CIA, or have some other motive for making these unauthorized disclosures.

This bill makes one clear statement: If intelligence identities and intelligence activities are worth protecting, they are worth protecting fully and effectively.

Mr. President, in concluding my remarks today, I say, thank God for patriotic Americans like Richard Welch, the Kinsman family, Jesse Jones, and many others who serve their Nation loyally on difficult and dangerous missions abroad. These patriotic Americans families carry the torch of freedom to the dark corners of the world. Their work, their knowledge and their understanding enlightens our Government and our policymakers. We owe them far more than the simple protection this law provides. They constitute, in effect, the first line of defense of the free world. They are soldiers in the war against ignorance, and they perform their duties amidst great hardship, difficulty and danger. Our support of this bill and of this conference report is a reflection of the Senate's understanding and support for their sacrifice and their contribution. Thank God for these patriotic American citizens.

Representative McClory:

The record is both long and convincing on the need for legislation protecting the identities of U.S. covert intelligence agents. Our intelligence officers, and the people whom they recruit to provide

information and assistance, work on behalf of our country's security--often at significant risk to their lives. The bill now before us would help minimize these risks by providing criminal penalties for the unauthorized disclosure of the identities of these outstanding men and women.

....

There is no legislation which will come before this Congress which in my view can do more to help enhance our own national security because, indeed, the work of our intelligence agents do assure our national security as completely and as thoroughly, and sometimes in a better way, than do our Armed Forces.

So I think we can be very proud of supporting this legislation and recognize that we are performing an act in behalf of our own survival as a nation.

Representative Mazzoli:

The effort of the managers...is to protect the people who serve this Nation in undercover capacities in dealing with our national intelligence from the reprehensible and thoroughly disgusting activities of identifying these people, subjecting them to harm or in effect to ruin their ability to perform for this Government, which has triggered this bill, H.R. 4.

....

There is a clear need to be sure that we are putting this bill in a position to drive a wooden stake into the hearts of those people who practice the nefarious trade of identifying Americans who are trying to do the job of protecting this country. This bill does that.

The statutory exemptions and protections noted above are designed to enable the United States to maintain and operate an effective and, by necessity, clandestine intelligence service; and, to a substantial extent, this has been achieved. However, as a consequence of how the U.S. Government is structured and how various benefits programs for federal employees generally are administered, sensitive information pertaining to Agency personnel, including current and former covert employees, has been and continues to be disseminated to a number of other federal departments and

agencies. While some steps have been taken to safeguard such information when it reaches those other agencies, the employees there are not steeped in the same discipline and culture of cover and secrecy as employees of this Agency, and unfortunate lapses or gaps in ensuring the security of classified and other sensitive data have been identified. Accordingly, an effort is underway ✓ to correct these information security deficiencies and lacunae by administrative means (i.e., inter-agency agreements) where possible. With regard to those benefits programs which are too extensive or too complex to be readily amenable to any administrative "fix," appropriate legislative initiatives to cure the problem will be considered.

STAT

